

SENATE BILL 1751
By Cooper J

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, relative to insurance adjusters.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Adjuster" means an individual who, as an independent contractor, or as an employee of an independent contractor, adjustment bureau, association, insurance company or corporation, general property and casualty agent, managing general agent, or self-insured, investigates or adjusts losses on behalf of either an insurer or a self-insured, or any person who supervises the handling of claims;

(2) "Adjuster" shall not include:

(A) An attorney at law who adjusts insurance losses from time to time incidentally to the practice of law, and who does not advertise or represent that such attorney is an adjuster;

(B) A salaried employee of an insurer who is not regularly engaged in the adjustment, investigation, or supervision of insurance claims;

(C) Persons employed only for the purpose of furnishing technical assistance to a licensed adjuster, including, but not limited to, photographers,

estimators, private detectives, engineers, handwriting experts, and attorneys at law;

(D) A licensed agent or general agent of an authorized insurer who processes undisputed or uncontested losses for such insurer under policies issued by such agent or general agent;

(E) A person who performs clerical duties with no negotiations with the parties on disputed or contested losses for such insurer under policies issued by such agent or general agent;

(F) A person who is employed principally as a right-of-way and claims agent and whose primary responsibility is the acquisition of easements, leases, permits, or other real property rights and whose claims handling arises out of operations under those easements, leases, permits, or other contracts or contractual obligations;

(G) A person who is employed principally as a right-of-way agent or right-of-way and claims agent and whose primary responsibility is the acquisition of easements, leases, permits, or other real property rights and whose claims handling arises out of operations under those easements, leases, permits, or other contracts or contractual obligations; or

(H) An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments;

(3) "Commissioner" means the commissioner of insurance;

(4) "Department" means the department of commerce and insurance; and

(5) "Insurer" means any insurance company or self-insured company.

SECTION 2.

(a) No person shall act as an adjuster in this state unless such person is licensed by the state, except that an individual, who is undergoing education and training as an adjuster

under the direction and supervision of a licensed adjuster, may for a period not exceeding twelve (12) months act as an adjuster without having an adjuster's license, if at the beginning of such training period, the name of such trainee has been registered with the commissioner. No license shall be required for a nonresident insurance adjuster for the adjustment in this state of a single loss, or losses arising out of a catastrophe common to all such losses, or who is acting as a temporary substitute for a licensed adjuster, unless as outlined specifically in a separate section of this act.

(b) Any person who violates the provisions of this section shall be guilty of a Class B misdemeanor.

SECTION 3. Application for a license as an insurance adjuster shall be made to the department upon forms as prescribed and furnished by the department. An applicant shall furnish such information concerning such applicant's identity, personal history, experience, business record, and other pertinent facts as the department may reasonably require.

SECTION 4. The department may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

SECTION 5. In the event of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence, the commissioner shall, upon application, issue an emergency license to persons who are residents or nonresidents of this state and who may or may not be otherwise licensed adjusters. Such emergency license shall remain in force for a period not to exceed ninety (90) days, unless extended for an additional period of ninety (90) days by the commissioner. The applicant must be certified by a person licensed under the provisions of this act or by an insurer that maintains an office in this state and is licensed to do business in this state. The licensed adjuster or insurer who certifies such applicant under the provisions of this section shall be responsible for the loss or claims practices of the emergency license holder. Within five (5) days of any

applicant beginning work as an adjuster, the employer of such adjuster shall certify such application to the commissioner. The commissioner may, after notice and hearing, revoke such emergency license upon the grounds as otherwise contained in this act providing for revocation of an adjuster's license. The fee for an emergency license shall be determined by the board and shall be due and payable within thirty (30) days of the issuance of such emergency license.

SECTION 6.

(a) An insurer shall not knowingly refer any claim or loss for adjustment in this state to any person purporting to be or acting as an insurance adjuster unless such person is currently licensed as required by this act.

(b) Before referring any such claim or loss, the insurer shall ascertain from the commissioner whether the proposed insurance adjuster is currently licensed. Having once ascertained that a particular person is licensed, the insurer may assume that such licensee is licensed until the insurer has knowledge, or receives information from the commissioner, to the contrary.

SECTION 7.

(a) The commissioner shall license as an insurance adjuster only an individual who has otherwise complied with this act, and who has furnished evidence satisfactory to the board that:

(1) Such person is at least eighteen (18) years of age;

(2) Such person is a bona fide resident of this state, or is a resident of a state or country which will permit residents of this state to act as insurance adjusters in such other state or country;

(3) If such person is a nonresident of the United States, the person has complied with all federal laws pertaining to employment or the transaction of business in the United States, and has complied with all federal laws pertaining to employment or the transaction of business in the United States;

(4) The applicant is a trustworthy person;

(5) The applicant has had experience or special education or training with reference to the handling of loss claims under insurance contracts of sufficient duration and extent to make him competent to fulfill the responsibilities of an insurance adjuster; and

(6) The applicant has successfully passed an examination as required by the commissioner in accordance with this act or has been exempted according to the provisions of this act.

(b) The commissioner may waive any continuing education requirements for a nonresident adjuster with a valid license from another state having continuing education requirements substantially equivalent to those of this state.

SECTION 8.

(a) If the board considers it necessary, a special insurance adjuster's license may be issued under this act to any license applicant in the manner provided for the issuance of an insurance adjuster's license.

(b) A special insurance adjuster's license shall specifically limit the lines of insurance that may be handled by the licensee.

(c) No person who is acting under a special insurance adjuster's license may handle any other lines of insurance other than those lines specified in the license.

(d) Any person who violates the provisions of subsection (c) of this section is guilty of a Class B misdemeanor.

SECTION 9.

(a) The commissioner, with the approval of the board, shall appoint an advisory board to make recommendations with respect to the scope, time and conduct of written examinations, and the times and places within the state where they shall be held, and such other matters as the commissioner may submit to the board for their recommendations.

(b) The advisory board is composed of nine (9) members. Three (3) members must be representatives of the general public. The remaining members shall be three (3) members with knowledge and experience in the insurance adjusting profession, one (1) member from a domestic insurance company authorized to do business in Tennessee, one (1) member from a foreign insurance company licensed to do business in Tennessee, and one (1) independent adjuster.

(c) The public representatives may not be an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the department.

(d) The members of the advisory board shall serve without pay, but, upon authorization of the commissioner, shall be reimbursed for their reasonable expenses in attending meetings of the advisory board.

SECTION 10. Each applicant for a license as an adjuster shall, prior to the issuance of such license, personally take and pass, to the satisfaction of the commissioner, an examination as a test of such applicant's qualifications and competency; but the requirement of an examination shall not apply to any of the following:

(1) An applicant who for the ninety (90) day period next preceding the effective date of this act has been principally engaged in the investigation, adjustment, or supervision of losses and who is so engaged on the effective date of this act;

(2) An applicant for the renewal of a license issued hereunder;

(3) An applicant who is licensed as an insurance adjuster, as defined by this statute, in another state with which state a reciprocal agreement has been entered into by the commissioner; or

(4) Any person who has completed a course or training program in adjusting of losses as prescribed and approved by the commissioner and has certified to the commissioner upon completion of the course that such person has completed such

course or training program, and has passed an examination testing such person's knowledge and qualification, as prescribed by the commissioner.

SECTION 11.

(a) Each examination for a license as an adjuster shall be as the board may prescribe and shall be of sufficient scope reasonably to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state, applicable to such a licensee.

(b) The board shall prepare and make available to applicants a manual or instructions specifying in general terms the subjects which may be covered in any examination for such a license.

SECTION 12.

(a) The answers of the applicant to any such examination shall be made in writing by the applicant. Any such written examination may be supplemented by oral examination.

(b) The examination shall be given at such times and places within this state as the board deems necessary reasonably to serve the convenience of both the commissioner and applicants.

(c) The commissioner may require a waiting time of reasonable duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

SECTION 13. The commissioner shall prescribe the form of the insurance adjuster's license. The license shall contain:

(1) The name of the insurance adjuster and the address of adjuster's place of business;

(2) Date of issuance and date of expiration of the license; and

(3) Firm or insurer with whom insurance adjuster is employed at time license is issued.

SECTION 14.

(a) The commissioner shall collect in advance the following nonrefundable fees for an adjuster's license and examination:

(1) Insurance adjuster's license, each two (2) years, a fee in an amount not to exceed fifty dollars (\$50.00) as determined by the board, plus a fee equal to one-half (1/2) of the original license fee if the license is expired for not more than ninety (90) days; and

(2) For each examination, if given by the board, a fee in an amount not to exceed fifty dollars (\$50.00) as determined by the board.

(b) The fees prescribed in subsection (a) of this section shall accompany the application for an original license or a renewal thereof.

(c) When collected, the fees provided for by this act shall be deposited in the general fund of the state treasury.

SECTION 15. Every licensed adjuster shall have and maintain a place of business accessible to the public. Such place of business shall be located where the adjuster principally conducts transactions under the license. The licensee shall promptly notify the commissioner of any change in the location of the place of business.

SECTION 16. The department may discipline an adjuster or deny an application under rules and regulations promulgated by the commissioner pursuant to title 4, chapter 5, or any other applicable insurance law of this state.

SECTION 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 18. This act shall take effect upon becoming a law, the public welfare requiring it.